



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164362

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a telephonic hearing was held on April 02, 2015.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective February 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On September 22, 2014 the FS agency issued a FoodShare Employment and Training Program Referral to the petitioner. Exhibit 2. His begin month was September.

3. Petitioner was scheduled for an orientation to FSET on October 14, 2014. Petitioner missed this appointment.
4. Petitioner was scheduled for an orientation to FSET on October 30, 2014. Petitioner missed this appointment.
5. Petitioner was scheduled for an orientation to FSET on November 3, 2014. Petitioner missed this appointment.
6. Petitioner was scheduled for an orientation to FSET on November 20, 2014. Petitioner missed this appointment.
7. On November 20, 2014 the agency mailed a Final Notice to petitioner. It stated, "If you do not take part in the FSET program or meet your work requirement, you may only be able to receive 3 months of FoodShare benefits in a 36 month period." It also reminded him that his appointment was again rescheduled, this time to December 3, 2014. Petitioner missed this appointment.
8. On December 4, 2014 the agency mailed another Final Notice to petitioner. It stated, "If you do not take part in the FSET program or meet your work requirement, you may only be able to receive 3 months of FoodShare benefits in a 36 month period." It also reminded him that his appointment was again rescheduled, this time to December 15, 2014.
9. On December 9, 2014 the petitioner's wife reported to the agency that petitioner was working.
10. On December 10, 2014 the agency mailed a request for wage verification to the petitioner, with a due date of December 19, 2014. No verification was received by the agency.
11. On December 15, 2014 petitioner was rescheduled to December 17, 2014.
12. On December 15, 2014 the agency mailed another Final Notice to petitioner. It stated, "If you do not take part in the FSET program or meet your work requirement, you may only be able to receive 3 months of FoodShare benefits in a 36 month period." It also reminded him that his appointment was again rescheduled, this time to December 17, 2014. Petitioner missed this appointment.
13. On December 17, 2014 the agency mailed an Urgent-Final Reminder to the petitioner.
14. On December 22, 2014 the agency issued a notice of decision to petitioner stating that his FS would end February 1, 2015 because he did not provide the requested wage verification.
15. On January 5, 2015 the petitioner applied for FS.
16. On January 21, 2015 the agency received wage verifications from petitioner. The wages did not show that he worked 20 hours or more per week.
17. On February 13, 2015 the agency issued a notice of decision to petitioner stating that his FS application was denied because he had used 3 months of time limited benefits without meeting a work requirement during those 3 months.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24.

On June 11, 2014 the Department of Health Services (DHS) issued Operations Memo #14-25 which outlined Wisconsin's policy and instruction for applying Time-Limited FoodShare Benefits (TLBs) to ABAWDs. Operations Memo #14-25, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-25amendedv3.pdf>. As explained in that Memo, effective July 1, 2014, FS applicants and members residing in Kenosha, Racine, and Walworth counties were subject to the new eligibility rules which determine if a person is an ABAWD subject to time-limited FS benefits. *Id.* Thus, petitioner was subject to these new rules.

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. See *FS Handbook* §3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits (TLBs) in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.

...
FS Handbook, §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
 - a. Receiving temporary or permanent disability benefits from the government or a private source;
 - b. Mentally or physically unable to work, as determined by the IM agency;
 - c. Verified as unable to work by a statement from a health care professional or social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

FS Handbook, §3.17.1.5.

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;

2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

FS Handbook, §13.17.1.7.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* As just noted, a person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FS Handbook, §3.17.1.17.*

Petitioner did not deny his lack of participation in FSET, but rather argued that he was unable to make his FSET appointments because he was either working or dealing with issues with his wife and children, or at home watching the children. However, as shown by the agency, the petitioner has not met the work requirement. And while dealing with family issues can be time-consuming, it does not exempt him either. The agency showed that it underwent its best efforts to get petitioner in for his FSET appointments. He failed to show that he was exempt from meeting his requirements thereunder. Accordingly, I must find that he has exhausted his TLBs and the agency acted correctly in terminating his FS.

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner's FoodShare benefits for failing to meet ABAWD requirements – here FSET participation.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

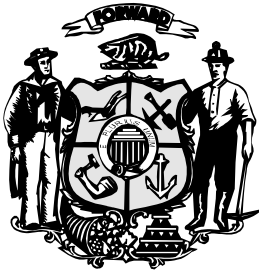
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 23, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability